

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RUDY E. VILLALOBOS,

Petitioner-Appellant,

vs.

FRED R. DICKSON, et al.,

Respondent-Appellee.

No. 22288

APPELLEE'S BRIEF

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JURISDICTION

The jurisdiction of the United States District Court to entertain appellant's civil action under Title 42, United States Code, section 1983, was conferred by Title 28, United States Code section 1343(3). The jurisdiction of this Court is conferred by Title 28, United States Code section 1291.

STATEMENT OF THE CASE

Appellant, an inmate of Folsom State Prison, initiated an action under the Federal Civil Rights Act, 42 U.S.C. 1983, for general damages in the amount of \$30,000, \$10,000 to be assessed individually against Fred R. Dickson, Chairman of the California Adult Authority, and against William H. Madden and Abelicio Chavez, members of the Adult Authority. In addition, appellant sought

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punitive damages in the amount of \$30,000, \$10,000 to be assessed individually against each of the named appellees. The complaint was filed in the District Court on May 19, 1967. (TR 1.) On the same day a summons was issued to the appellees. (TR 1.)

On August 14, 1967, the District Court ordered that appellees be granted an extension of thirty days in which to respond to the complaint (TR 13). Appellees filed on August 28, 1967, a motion to dismiss pursuant to Rule 12(b) of the Federal Rules of Civil Procedure on the ground that the complaint failed to state a claim against appellees upon which relief could be granted and a motion for summary judgment pursuant to Rule 56(b) on the ground that the complaint was sham and frivolous. (TR 23.) Appellant filed a motion in opposition on August 18, 1967 (TR 37).

In an order filed on August 20, 1967, after consideration of the complaint, the notice of motion and memorandum of points and authorities submitted by defendants, and other documents and papers submitted to the court by appellant, the court granted appellees' motion and dismissed the action pursuant to Rules 12(b) and 56(b) of the Federal Rules of Civil Procedure (TR 40).

SUMMARY OF APPELLANT'S ARGUMENT

1. The District Court improperly dismissed the complaint.

SUMMARY OF APPELLEES' ARGUMENT

I. The District Court properly dismissed the complaint as it fails to state a claim against defendants upon which relief can be granted.

II. The District Court properly dismissed the complaint as it is sham and frivolous.

ARGUMENT

I

THE DISTRICT COURT PROPERLY DISMISSED
THE COMPLAINT AS IT FAILS TO STATE A
CLAIM AGAINST DEFENDANTS UPON WHICH
RELIEF CAN BE GRANTED

By his complaint appellant sought money damages from members of the California Adult Authority. The Adult Authority is a quasi-judicial body empowered by the Legislature to administer California's indeterminate sentence law. Cal. Pen. Code §§ 1168, 3020. In re McVickers, 29 Cal.2d 264 (1946). The members thereof are therefore absolutely immune from civil liability for acts performed within their quasi-judicial capacity. See Clark v. Washington, 366 F.2d 678, 681 (9th Cir. 1966); Robichaud v. Ronan, 351 F.2d 533, 536 (9th Cir. 1965); Belveal v. Bray, 253 F. Supp. 606, 608-609 (D. Colo. 1966). Appellant's

complaint fails to state a claim upon which relief can be granted for yet another reason. The revocation of appellant's parole and the refixing of his sentence at maximum in this case does not present a federal question. In re Costello, 262 F.2d 214 (9th Cir. 1958); cf. Spry v. Oberhauser, 361 F.2d 391, 392 (9th Cir. 1966); Ferchaw v. Tinsley, 234 F. Supp. 922, 924 (D. Colo. 1964). Thus, on either this ground or on the ground of official immunity, the District Court was correct in dismissing appellant's complaint.

Additionally, it should be noted that appellant by placing in issue the action of the Adult Authority returning him to prison as a parole violator is essentially attacking the legality of his confinement. Accordingly, his action should be in habeas corpus, not under the Civil Rights Act since to permit such an attack in an action under the Civil Rights Act would be to permit appellant to circumvent habeas corpus requirements. 1/ DeWitt v. Pail, 366 F.2d 682 (9th Cir. 1966); Johnson v. Walker, 317 F.2d 418 (5th Cir. 1963); Davis v. Maryland,

1. Appellant has not raised the question of the revocation of his parole in the California Supreme Court although California does provide a remedy for wrongful revocation of parole. See, e.g. In re Hall, 63 Cal.2d 115 (1965). Accordingly, he has not exhausted an available state remedy, and his action if viewed as one in habeas corpus is premature. Title 28 U.S.C. § 2254.

248 F. Supp. 951 (D. Md. 1965). For this reason, too, the District Court properly dismissed appellant's complaint.

Finally, the fact that appellant brought his action in the District Court under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, is of no aid to him. The statute authorizing declaratory judgments in federal courts does not confer any added jurisdiction in the federal courts but merely enlarges the range of available remedies. Skelly Oil Co. v. Phillips Petroleum Co., 339 U. S. 667, 671-72 (1950).

II

THE DISTRICT COURT PROPERLY DISMISSED THE COMPLAINT AS IT IS SHAM AND FRIVOLOUS

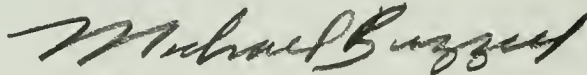
There is no merit to plaintiff's assertion that parole was wrongfully revoked. Plaintiff was charged with three specific parole violations: using alcoholic beverages to excess, attempting an act of rape, and associating with persons of bad reputation. Plaintiff plead guilty to using alcohol to excess and associating with persons of bad reputation. See Clerk's Transcript, pp. 28-34. Therefore, the complaint was properly dismissed as it is sham and frivolous.

CONCLUSION

We respectfully submit the judgment of the
District Court should be affirmed.

THOMAS C. LYNCH, Attorney General
of the State of California

DERALD E. GRANBERG
Deputy Attorney General

A handwritten signature in dark ink, appearing to read "Michael Buzzell", written in a cursive style.

MICHAEL BUZZELL
Deputy Attorney General

Attorneys for Appellee.

MB:ck
SF CR 67-1238

CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, this brief is in full compliance with these rules.

Dated: December 28, 1967